

PART 199.3 - ELIGIBILITY

(a) General.—This section sets forth those persons who, by the provisions of 10 U.S.C. chapter 55, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. A determination that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements, as set forth in other sections of this part, must be met. Additionally, the use of CHAMPUS may be denied if a Uniformed Service medical treatment facility capable of providing the needed care is available. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification.

(b) CHAMPUS eligibles—(1) Retiree. A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniformed Service.

(2) Dependent. Individuals whose relationship to the sponsor leads to entitlement to benefits. CHAMPUS eligible dependents include the following:

(i) Spouse. A lawful husband or wife of a member or former member. The spouse of a deceased member or retiree must not be remarried. A former spouse also may qualify for benefits as a dependent spouse. A former spouse is a spouse who was married to a military member, or former member, but whose marriage has been terminated by a final decree of divorce, dissolution or annulment. To be eligible for CHAMPUS benefits, a former spouse must meet the criteria described in paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section and must qualify under the group defined in paragraph (b)(2)(i)(F)(1) or (b)(2)(i)(F)(2) of this section.

(A) Must be unremarried; and

(B) Must not be covered by an employer-sponsored health plan; and

(C) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay; and

(D) Must not be eligible for Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii), and (f)(3)(ix) of this section; and

(E) Must not be the dependent of a NATO member; *and*

(F) Must meet the requirements of paragraph (b)(2)(i)(F)(1) or (b)(2)(i)(F)(2) of this section:

(1) The former spouse must have been married to the same member or former member for at least 20 years, at least 20 of which were creditable in determining the member's or former member's eligibility for retired or retainer pay. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section.

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(i) If the date of the final decree of divorce, dissolution, or annulment was before February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care received on or after January 1, 1985.

(ii) If the date of the final decree of the divorce, dissolution, or annulment was on or after February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care which is received on or after the date of the divorce, dissolution, or annulment.

(2) The former spouse must have been married to the same member or former member for at least 20 years, and at least 15, but less than 20 of those married years were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(i) If the date of the final decree of divorce, dissolution, or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985, or the date of the divorce, dissolution, or annulment, whichever is later. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section.

(ii) If the date of the final decree of divorce, dissolution or annulment is on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible only for care received from the date of the decree of divorce, dissolution, or annulment until December 31, 1988, or for two years from the date of the divorce, dissolution, or annulment, whichever is later.

(iii) If the date of the final decree of divorce, dissolution, or annulment is on or after September 29, 1988, the former spouse is eligible only for care received within the 365 days (366 days in the case of a leap year) immediately following the date of the divorce, dissolution, or annulment.

(ii) Child. A dependent child is an unmarried child of a member or former member who has not reached his or her twenty-first (21st) birthday, except an incapacitated adopted child meeting the requirements of paragraph (b)(2)(ii)(H)(2) of this section, and who bears one of the following relationships to a member or former member of one of the Uniformed Services:

(A) A legitimate child; or

(B) An adopted child whose adoption has been legally completed on or before the child's twenty-first (21st) birthday; or

(C) A legitimate stepchild; or

(D) An illegitimate child of a *member or former member* whose paternity/maternality *has been* determined judicially, and the member or former member directed to support the child; or

(E) An illegitimate child of a *member or former member* whose paternity/maternality *has not been* determined judicially, who resides with or in the home provided by the member or former member, and is or continues to be dependent upon the member or former member for over one-half of his or her support, or who was so dependent on the former member at the time of the former member's death; or

(F) An illegitimate child of a *spouse of a member* who resides with or in a home provided by

the member and is, and continues to be dependent upon the member for over one-half of his or her support; or

(G) An illegitimate child of a *spouse of a former member* who resides with or in a home provided by a former member or the former member's spouse at the time of death of the former member, and is, or continues to be, or was, dependent upon the former member for more than one-half of his or her support at the time of death; or

(H) An individual who falls into one of the following classes:

(1) A student. A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has passed his or her 21st birthday but has not passed his or her 23rd birthday, is dependent upon the member or former member for over 50 percent of his or her support or was dependent upon the member or former member for over 50 percent of his or her support on the date of the member's or former member's death, and is pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C. chapters 34 and 35.

NOTE: Courses of education offered by institutions listed in the "Education Directory," "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(2) An incapacitated child. A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married and is incapable of self-support because of a mental or physical disability that:

(i) Existed before the child's twenty-first (21st) birthday; or

(ii) Occurred between the ages of 21 and 23 while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education (see NOTE to paragraph (b)(2)(ii)(H)(2)(iii) of this section), and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support; and

(iii) The incapacity is continuous. (If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity, unless the incapacity recurs and the beneficiary is under age 21, or is under age 23 and is enrolled as a full-time student under paragraph (b)(2)(ii)(H)(2)(ii) of this section. If the child was not incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. However, incapacitated children who marry and who subsequently become unmarried through divorce, annulment, or death of spouse, may be reinstated as long as they still meet all other requirements).

NOTE: An institution of higher learning is a college, university, or similar institution, including a technical or business school, offering post-secondary level academic instruction that leads to an associate or higher degree, if the school is empowered by the appropriate State education authority under State law to grant an associate, or higher, degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. The term also shall include a hospital offering educational programs at the post-secondary level regardless of whether the hospital grants a post secondary degree. The term also shall include an educational institution that is not located in a State, that offers a course leading to a standard college degree, or the equivalent, and that is recognized as such by the Secretary of Education (or comparable official) of the country, or other jurisdiction, in which the institution is located (38 U.S.C. chapter 34, section 1661, and chapter 35, section 1701.

Courses of education offered by institutions listed in the "Education Directory," "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to chapters 34 and 35 of 38 U.S.C., a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(3) A child of a deceased reservist. A child, who is determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, of a reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training, and the reservist dies as a result of that specific injury, illness or disease.

(4) A child placed in legal custody of a member or former member. A child who is placed in legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child.

(iii) Abused dependents.—(A) Categories of abused dependents. An abused dependent may be either a spouse or a child. Eligibility for either class of abused dependent results from being either:

(1) The spouse (including a former spouse) or child of a member who has received a dishonorable or bad-conduct discharge, or dismissal from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result of such an offense. Until October 17, 1998, Medical benefits are limited to care related to the physical or emotional abuse and for a period of 12 months following the member's separation from the Uniformed Service. On or after October 17, 1998, medical benefits can include all under the Basic Program and under the **Extended Care Health Option** for the period that the spouse or child is in receipt of transitional compensation under section 1059 of title 10 U.S.C.

(2) The spouse (including a former spouse) or child of a member or former member who

while a member and as a result of misconduct involving abuse of the spouse or child has eligibility to receive retired pay on the basis of years of service terminated.

(B) Requirements for categories of abused dependents.—(1) Abused spouse. As long as the spouse is receiving payments from the DoD Military Retirement Fund under court order, the spouse is eligible for health care under the same conditions as any spouse of a retired member. The abused spouse must:

(i) Under paragraph (b)(2)(iii)(A)(1) of this section, be a lawful husband or wife or a former spouse of the member; or

(ii) Under paragraph (b)(2)(iii)(A)(2) of this section, be a lawful husband or wife or a former spouse of the member or former member, and the spouse is receiving payments from the Department of Defense Military Retirement Fund under 10 U.S.C. 1408(h) pursuant to a court order; and

(A) Be a victim of the abuse; and

(B) Have been married to the member or former member at the time of the abuse; or

(C) Be the natural or adoptive parent of a dependent child of the member or former member who was the victim of the abuse.

(2) Abused child. The abused child must:

(i) Under paragraph (b)(2)(iii)(A)(1) of this section, be a dependent child of the member or former member.

(ii) Under paragraph (b)(2)(iii)(A)(2) of this section,

(A) Have been a member of the household where the abuse occurred; and

(B) Be an unmarried legitimate child, including an adopted child or stepchild of the member or former member; and

(C) Be under the age of 18; or

(D) Be incapable of self support because of a mental or physical incapacity that existed before becoming 18 years of age and be dependent on the member or former member for over one-half of his or her support; or

(E) If enrolled in a full-time course of study in an institution of higher learning recognized by the Secretary of Defense (for the purposed of 10 U.S.C. 1408(h)), be under 23 years of age and be dependent on the member or former member for over one-half of his or her support.

(F) The dependent child is eligible for health care, regardless of whether any court order exists, under the same conditions as any dependent of a retired member.

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(3) TAMP eligibles. A former member, including his or her dependents, who is eligible under the provisions of the Transitional Assistance Management Program as described in paragraph (e) of this Sec. 199.3.

(3) Eligibility under TRICARE Senior Pharmacy Program. Section 711 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398, 114 Stat. 1654) established the TRICARE Senior Pharmacy Program effective April 1, 2001. To be eligible for this program, a person is required to be:

(i) Medicare eligible, who is:

(A) 65 years of age or older; and

(B) Entitled to Medicare Part A; and

(C) Enrolled in Medicare Part B, except for a person who attained age 65 prior to April 1, 2001, is not required to enroll in Part B; and

(ii) Otherwise qualified under one of the following categories:

(A) A retired uniformed service member who is entitled to retired or retainer pay, or equivalent pay including survivors who are annuitants; or

(B) A dependent of a member of the uniformed services described in one of the following:

(1) A member who is on active duty for a period of more than 30 days or died while on such duty; or

(2) A member who died from an injury, illness, or disease incurred or aggravated while the member was:

(i) On active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) Traveling to or from the place at which the member was to perform or had performed such active duty, activity duty for training, or inactive duty training.

NOTE TO PARAGRAPH (b)(3)(ii)(B): Dependent under Section 711 of the National Defense Authorization Act for Fiscal Year 2001 includes spouse, unremarried widow/widower, child, parent/parent-in-law, unremarried former spouse, and unmarried person in the legal custody of a member or former member, as those terms of dependency are defined and periods of eligibility are set forth in 10 U.S.C. 1072(2).

(4) Medal of Honor recipients. (i) A former member of the armed forces who is a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits has the same CHAMPUS eligibility as does a retiree.

(ii) Immediate dependents. CHAMPUS eligible dependents of a Medal of Honor Recipient are those identified in paragraphs (b)(2)(i) of this section (except for former

spouses) and (b)(2)(ii) of this section (except for a child placed in legal custody of a Medal of Honor recipient under (b)(2)(ii)(H)(4) of this section).

(iii) Effective date. The CHAMPUS eligibility established by paragraphs (b)(4)(i) and (ii) of this section is applicable to health care services provided on or after October 30, 2000.

(c) Beginning dates of eligibility. (1) Beginning dates of eligibility depend on the class to which the individual belongs and the date the individual became a member of the class. Those who join after the class became eligible attain individual eligibility on the date they join.

(2) Beginning dates of eligibility for each class of spouse (*excluding spouses who are victims of abuse and eligible spouses of certain deceased reservists*) are as follows:

(i) A spouse of a member for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program *and* benefits under the **Extended Care Health Option**, January 1, 1967;

(ii) A spouse of a former member:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the **Extended Care Health Option**.

(iii) A former spouse:

(A) For medical benefits under the Basic Program, dates of beginning eligibility are as indicated for each category of eligible former spouse identified within paragraph (b)(2)(i) of this section.

(B) Ineligible for benefits under the **Extended Care Health Option**.

(3) Beginning dates of eligibility for spouses who are victims of abuse (*excluding spouses who are victims of abuse of certain deceased reservists*) are as follows:

(i) An abused spouse meeting the requirements of paragraph (b)(2)(iii)(A)(1) of this section, including an eligible former spouse:

(A) For medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For all medical and dental benefits under the Basic Program for the period that the spouse is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October

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(C) For medical and dental care for problems associated with the physical or emotional abuse under the **Extended Care Health Option** for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(D) For all medical and dental benefits described in section 199.5 for the period that the spouse is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(ii) An abused spouse meeting the requirements of paragraphs (b)(2)(iii)(A)(2) of this section, including an eligible former spouse:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the **Extended Care Health Option**.

(4) Beginning dates of eligibility for spouses of certain deceased reservists, *including spouses who are victims of abuse of certain deceased reservists*, are as follows:

(i) A spouse meeting the requirements of paragraph (b)(2)(i) of this section, including an eligible former spouse:

(A) For benefits under the Basic Program, November 14, 1986.

(B) Ineligible for benefits under the **Extended Care Health Option**.

(ii) An abused spouse of certain deceased reservists, meeting the requirements of paragraphs (b)(2)(iii) of this section, including an eligible former spouse, *for the limited benefits and period of eligibility* described in paragraphs (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, November 14, 1986.

(B) For benefits under the **Extended Care Health Option**, November 14, 1986.

(iii) An abused spouse of certain deceased reservists, including an eligible former spouse, meeting the requirements of paragraphs (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, October 23, 1992.

(B) Ineligible for benefits under the **Extended Care Health Option**.

(5) Beginning dates of eligibility for each class of dependent children, *(excluding dependent children of certain deceased reservists, abused children and incapacitated children whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning)*, are as follows:

(i) Legitimate child, adopted child, or legitimate stepchild of a *member*, for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7,

1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program *and* benefits under the **Extended Care Health Option**, January 1, 1967;

(ii) Legitimate child, adopted child or legitimate stepchild of *former members*:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the **Extended Care Health Option**.

(iii) Illegitimate child of a male or female *member or former member* whose paternity/maternity has been determined judicially and the member or former member has been directed to support the child, for:

(A) All benefits for which otherwise entitled, August 31, 1972.

(B) **Extended Care Health Option** benefits limited to dependent children of *members* only, August 31, 1972.

(iv) Illegitimate child of:

(A) A male member or former member whose paternity *has not been* determined judicially:

(B) A female member or former member who resides with, or in a home provided by the member or former member, or who was residing in a home provided by the member or former member at the time of the member's or former member's death, and who is or continues to be dependent on the member for over one-half of his or her support, or was so dependent on the member or former member at the time of death;

(C) A spouse of a member or former member who resides with or in a home provided by the member or former member, or the parent who is the spouse of the member or former member or was the spouse of a member or former member at the time of death, and who is and continues to be dependent upon the member or former member for over one-half of his or her support, or was so dependent on the member or former member at the time of death; for:

(1) All benefits for which otherwise eligible, January 1, 1969.

(2) **Extended Care Health Option** limited to dependent children of *members* only, January 1, 1969.

(6) Beginning dates of eligibility for children of certain deceased reservists who meet the requirements of paragraph (b)(2)(ii)(H)(3) of this section, *excluding incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(2) of this section*, for:

(i) Benefits under the Basic program, November 14, 1986.

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(ii) Not eligible for benefits under the **Extended Care Health Option**.

(7) Beginning dates of eligibility for children who are victims of abuse, *including incapacitated children* who meet the requirements of paragraph (b)(2)(ii)(H)(2) of this section are as follows:

(i) An abused child meeting the requirements of paragraph (b)(2)(iii)(A)(1) of this section:

(A) Medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For all medical and dental benefits under the Basic Program for the period that the child is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(C) Medical and dental care for problems associated with the physical or emotional abuse under the **Extended Care Health Option** for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(D) For all medical and dental benefits described in section 199.5 for the period that the child is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(ii) An abused child meeting the requirements of paragraphs (b)(2)(iii)(A)(2) of this section:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the **Extended Care Health Option**.

(8) Beginning dates of eligibility for incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(2) of this section, whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and, are or were at the time of the member's or former member's death, dependent on the member or former member for over one-half of their support, for:

(i) All benefits for which otherwise entitled, October 23, 1992.

(ii) **Extended Care Health Option** benefits limited to children of *members* only, October 23, 1992.

(9) Beginning dates of eligibility for a child who meets the requirements of paragraph (b)(2)(ii)(H)(4) and:

(i) Has been placed in custody by a court:

(A) All benefits for which entitled, July 1, 1994.

(B) **Extended Care Health Option** benefits limited to children of *members* only, July 1, 1994.

- (ii) Has been placed in custody by a recognized adoption agency:
- (A) All benefits for which entitled, October 5, 1994.
- (B) **Extended Care Health Option** benefits limited to children of *members* only, October 5, 1994.
- (10) Beginning dates of eligibility for a retiree for:
 - (i) Medical benefits under the Basic Program January 1, 1967.
 - (ii) Retirees and their dependents are not eligible for benefits under the **Extended Care Health Option**.

(d) Dual eligibility. Dual eligibility occurs when a person is entitled to benefits from two sources. For example, when an active duty member is also the dependent of another active duty member, a retiree, or a deceased active duty member or retiree, dual eligibility, that is, entitlement to direct care from the Uniformed Services medical care system and CHAMPUS is the result. Since the active duty status is primary, and it is the intent that all medical care be provided an active duty member through the Uniformed Services medical care system, CHAMPUS eligibility is terminated as of 12:01 a.m. on the day following the day the dual eligibility begins. However, any dependent children in a marriage of two active duty persons or of an active duty member and a retiree, are CHAMPUS eligible in the same manner as dependent children of a marriage involving only one CHAMPUS sponsor. Should a spouse or dependent who has dual eligibility leave active duty status, that person's CHAMPUS eligibility is reinstated as of 12:01 a.m. of the day active duty ends, if he or she otherwise is eligible as a dependent of a CHAMPUS sponsor.

NOTE: No CHAMPUS eligibility arises as the result of the marriage of two active duty members.

(e) Eligibility Under the Transitional Assistance Management Program (TAMP). Transitional health care benefits under CHAMPUS are authorized for the applicable time period described, for:

- (1) Up to thirty (30) days or until again covered by an employer-sponsored health plan, whichever occurs earlier, following release from active duty for:
 - (i) Activated Guard/Reserve and their dependents,
 - (ii) Involuntary stop-loss and their dependents,
 - (iii) Voluntary stop-loss and their dependents, and
 - (iv) Members who accepted Voluntary Separation Incentives (VSI).
- (2) Sixty (60) days for regular DoD military and their dependents when the sponsor is involuntarily separated with less than six years of active service. Involuntary separation must occur during the five-year period beginning October 1, 1990.

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(3) One hundred twenty (120) days for regular military and their dependents when the sponsor is involuntarily separated with six or more years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990. Each branch of service will determine eligibility, including dates, for its members and their dependents and provide data to DEERS.

(f) Changes in status which result in termination of CHAMPUS eligibility. Changes in status which result in a loss of CHAMPUS eligibility as of 12:01 a.m. of the day following the day the event occurred, unless otherwise indicated, are as follows:

(1) Changes in the status of a member. (i) When an active duty member's period of active duty ends, excluding retirement or death.

(ii) When an active duty member is placed on desertion status (eligibility is reinstated when the active duty member is removed from desertion status and returned to military control).

NOTE: A member serving a sentence of confinement in conjunction with a sentence of punitive discharge is still considered on active duty until such time as the discharge is executed.

(2) Changes in the status of a retiree. (i) When a retiree ceases to be entitled to retired, retainer, or equivalent pay for any reason, the retiree's dependents lose their eligibility unless the dependent is otherwise eligible (e.g., some former spouses, some dependents who are victims of abuse and some incapacitated children as outlined in paragraph (b)(2)(ii)(H)(2) of this section).

(ii) A retiree also loses eligibility when no longer entitled to retired, retainer, or equivalent pay.

NOTE: A retiree who waives his or her retired, retainer or equivalent pay is still considered a retiree for the purposes of CHAMPUS eligibility.

(3) Changes in the status of a dependent. (i) Divorce, except for certain classes of former spouses as provided in paragraph (b)(2)(i) of this section and the member or former member's *own* children (i.e., legitimate, adopted, and judicially determined illegitimate children).

NOTE: An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the divorce becomes final.

(ii) Annulment, except for certain classes of former spouse as provided in paragraph (b)(2)(i) of this section and the member or former member's *own* children (i.e., legitimate, adopted, and judicially determined illegitimate children).

NOTE: An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the annulment becomes final.

(iii) Adoption, except for adoptions occurring after the death of a member or former member.

(iv) Marriage of a child, except when the marriage is terminated by death, divorce, or annulment before the child is 21 or 23 if an incapacitated child as provided in paragraph (b)(2)(ii)(H)(2) of this section.

(v) Marriage of a widow or widower, except for the child of the widow or widower who was the stepchild of the deceased member or former member at the time of death. The stepchild continues CHAMPUS eligibility as other classes of dependent children.

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii), and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available).

(vii) Attainment of age 65, except for dependents of active duty members, beneficiaries not entitled to part A of Medicare, beneficiaries entitled to Part A of Medicare who have enrolled in Part B of Medicare, and as provided in paragraph (b)(3) of this section. For those who do not retain CHAMPUS, CHAMPUS eligibility is lost at 12:01 a.m. on the first day of the month in which the beneficiary becomes entitled to Medicare.

NOTE: If the person is not eligible for Part A of Medicare, he or she must file a Social Security Administration, "Notice of Disallowance" certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued. Individuals entitled only to supplementary medical insurance (Part B) of Medicare, but not Part A, or Part A through the Premium HI provisions (provided for under the 1972 Amendments to the Social Security Act) retain eligibility under CHAMPUS (refer to Sec. 199.8 for additional information when a double coverage situation is involved).

(viii) End stage renal disease. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease unless the following conditions have been met. CHAMPUS eligibility will continue if:

- (A) The individual is under 65 years old;
- (B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426-1(a);
- (C) The individual is enrolled in Part B of Medicare; and
- (D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Enrollment Eligibility Reporting System (DEERS).

(ix) Individuals with certain disabilities. Each case relating to Medicare eligibility resulting from being disabled requires individual investigation. All beneficiaries except dependents of active duty members lose their CHAMPUS eligibility when Medicare coverage becomes available to a disabled person unless the following conditions have been met. CHAMPUS eligibility will continue if:

- (A) The individual is under 65 years old;

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- (B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426(b)(2);
- (C) The individual is enrolled in Part B of Medicare; and
- (D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Enrollment Eligibility Reporting System (DEERS).

(x) Disabled students, that is children age 21 or 22, who are pursuing a full-time course of higher education and who, either during the school year or between semesters, suffer a disabling illness or injury with resultant inability to resume attendance at the institution remain eligible for CHAMPUS medical benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, CHAMPUS benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in a full time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility and may not qualify for eligibility under the requirements related to mental or physical incapacity as described in paragraph (b)(2)(ii)(H)(2) of this section.

(g) Reinstatement of CHAMPUS eligibility. Circumstances which result in reinstatement of CHAMPUS eligibility are as follows:

(1) End Stage renal disease. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(viii) of the section, when Medicare eligibility ceases for end-stage renal disease patients, CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card.

(2) Disability. Some disabilities are permanent, others temporary. Each case must be reviewed individually. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(ix) of this section, when disability ends and Medicare eligibility ceases, CHAMPUS eligibility resumes if the person is otherwise still eligible. Again, he or she is required to take action to obtain a new CHAMPUS identification card.

(h) Determination of eligibility status. Determination of an individual's eligibility as a CHAMPUS beneficiary is the primary responsibility of the Uniformed Service in which the member or former member is, or was, a member, or in the case of dependents of a NATO military member, the Service that sponsors the NATO member. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the results of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(i) Procedures for determination of eligibility. Procedures for the determination of eligibility are prescribed within the Department of Defense Instruction 1000.13 available at local military facilities personnel offices.

(j) **CHAMPUS procedures for verification of eligibility.** (1) Eligibility for CHAMPUS benefits will be verified through the Defense Enrollment Eligibility Reporting System (DEERS) maintained by the Uniformed Services, except for abused dependents as set forth in paragraph (b)(2)(iii) of this section. It is the responsibility of the CHAMPUS beneficiary, or parent, or legal representative, when appropriate, to provide the necessary evidence required for entry into the DEERS file to establish CHAMPUS eligibility and to ensure that all changes in status that may affect eligibility be reported immediately to the appropriate Uniformed Service for action.

(2) Ineligibility for CHAMPUS benefits may be presumed in the absence of prescribed eligibility evidence in the DEERS file.

(3) The Director, OCHAMPUS, shall issue guidelines as necessary to implement the provisions.

[64 FR 46135, Aug. 24, 1999, as amended at 66 FR 9654, Feb. 9, 2001; 66 FR 16400, Mar. 26, 2001; 66 FR 40606, Aug. 3, 2001; 67 FR 15725, Apr. 3, 2002; 68 FR 23032; Apr. 30, 2003; 68 FR 32361; May 30, 2003; 68 FR 44947; Jul. 28, 2004]

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